

MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS

Title 24-A M.R.S.A. Chapter 81

APPLICATION REQUIREMENTS Specific to Employee Leasing Companies

“Multiple-employer welfare arrangement,” “arrangement,” or “MEWA” means an employer welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers or to their beneficiaries. A MEWA may not provide coverage to Maine employees unless it has been approved by the Superintendent of Insurance or is exempt from the approval requirement. The principal exceptions to the approval requirement are:

- (1) A multiple-employer group health insurance policy issued by a licensed health insurer does not require approval as a multiple-employer welfare arrangement.
- (2) Two or more employers under common ownership, or within the same “control group” as defined by ERISA, are combined and treated as a single employer.
- (3) An arrangement is not considered a MEWA if the federal Secretary of Labor has determined that it is established or maintained pursuant to one or more *bona fide* collective bargaining agreements.

Any arrangement by an employee leasing company to provide health benefits leased to client companies is considered a multiple-employer welfare arrangement under Maine law unless the benefits are provided exclusively through health insurance issued by a licensed insurer. Each of an employee leasing company’s client companies is considered a separate employer except to the extent that affiliated businesses are combined as described above. However, some of the legal requirements for MEWAs maintained by employee leasing companies are different from those applicable to MEWAs maintained by associations.

Filing Requirements for Initial Approval of a MEWA pursuant to the employee leasing provisions of Chapter 81:

1. The employee leasing company must be registered in Maine in accordance with Title 32, chapter 125.
2. The employee leasing company must pay the \$500 filing fee specified in section 601 at the time of the application for approval. The check shall be payable to the Treasurer, State of Maine.

3. A copy of the arrangement's excess insurance agreement and any other reinsurance agreement. Excess insurance must be purchased from an insurer licensed to transact health or casualty insurance in the State of Maine.
4. Audited financial statements for the leasing company for the most recent three years. If the arrangement is administered via a parent company, audited financial statements for the parent company must be provided as well.
5. The names and addresses of the trustees or other plan fiduciaries of the arrangement, and a description of each individual's relationship with the arrangement and the employee leasing company.
6. A copy of any applicable management and service agreements.
7. A copy of the documents that govern the operation of the arrangement.
8. A copy of the client employer participation agreement and the certificate, summary plan description, or other evidence of the benefits and coverage provided to covered employees.
9. Proof of deposit or a copy of the surety bond required pursuant to section 6607.
10. Evidence satisfactory to the Superintendent showing that the arrangement will be operated in accordance with sound actuarial principles. The arrangement may not be approved unless the Superintendent determines that the plan is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles.
11. Policy forms.
12. Network adequacy (if plan offered is managed care plan).
13. Compliance with Rule 850 (if plan offered is managed care plan).
14. Projected financial information for the arrangement for a two year period to include a balance sheet, income statement, and cash flow statement.
15. Investment policy for the arrangement. Description of how revenues and expenses for the arrangement are handled.
16. Additional information that the Superintendent may reasonably require.

An Employee Leasing Company MEWA is required to meet the following statutory requirements:

1. The MEWA must be operated in accordance with sound actuarial principles.
2. The MEWA must comply with the requirements of chapter 36, governing continuity of health insurance coverage.
3. The MEWA may issue only health care benefit plans that comply with the requirements of section 2808-B with regard to rating practices, coverage for late enrollees and guaranteed renewal. An arrangement may not provide health care benefits that do not meet or exceed the requirements for mandated benefits applicable to comparable insured plans.
4. The arrangement shall issue to each covered employee a contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. It must contain the following statement in boldface print in a conspicuous location:
“The benefits and coverages described herein are provided by *[name of employee leasing company]* on a self-insured basis, not through a contract with a commercial insurance carrier.”
5. The MEWA shall maintain specific excess insurance with a retention level determined in accordance with sound actuarial principles. The Superintendent may also require the MEWA to purchase aggregate excess insurance.
6. The MEWA must establish and maintain appropriate loss and loss expense reserves determined in accordance with sound actuarial principles and must fund obligations by depositing assets that will yield in a time frame matching maturing liabilities of the arrangement sufficient funds to discharge claims and other expense payments.
7. To qualify for and retain approval to transact business, the arrangement must make all contracts with administrators or service companies available for inspection by the Bureau initially and thereafter upon reasonable notice.

Ongoing Requirements after Initial Approval of a MEWA pursuant to the employee leasing provisions of Chapter 81:

1. Annual financial report certified by an independent certified public accountant. The report must include a letter of qualification from the accountant stating:
 - The accountant is independent with respect to the arrangement and conforms to the standards of the accountant's profession as contained in the code of professional ethics and pronouncements of the American Institute of Certified Public Accountants and the rules of professional conduct of the appropriate state Board of Accountancy or similar code;
 - The background and experience in general and the experience in audits or arrangements of the staff assigned to the engagement and whether each is an independent certified public accountant;
 - The accountant understands that the annual audited financial report and the accountant's opinion will be filed in compliance with this requirement and that the accountant knows the Superintendent will be relying on this information in the monitoring and regulation of the financial position of the arrangement;
 - The accountant consents and agrees to make all workpapers relating to the arrangement available for review by the Bureau or its consultant. Workpapers are the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of the arrangement;
 - A representation that the accountant is properly licensed by an appropriate state licensing authority and that the accountant is a member in good standing in the American Institute of Certified Public Accountants.
2. Within 45 days of the end of each fiscal quarter, the arrangement shall file with the Superintendent a letter from an independent certified public accountant attesting to the following:
 - The employees have been paid in a timely fashion;
 - That all payroll taxes and income taxes withheld have been paid to the appropriate state or federal agency in a timely fashion;
 - With respect to any health care benefits provided on other than a fully insured basis, that specific excess insurance is maintained with a retention level adequate for the plan; and
 - With respect to any health care benefits provided on other than a fully insured basis, that appropriate loss and loss expense reserves are maintained that are adequate for the plan.